

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 25 October 2005**

**BALCA Case No.: 2004-INA-00340**  
**ETA Case No.: P2004-GA-04415164**

*In the Matter of:*

**GEORGIA-PACIFIC CORPORATION,**  
*Employer,*

*on behalf of*

**ABBAS JAFFRI,**  
*Alien.*

Appearance: Mark J. Newman, Esquire  
Troutman Sanders, LLP  
Atlanta, Georgia  
*For the Employer and the Alien*

Certifying Officer: Floyd Goodman  
Atlanta, Georgia

Before: **Burke, Chapman and Vittone**  
Administrative Law Judges

**DECISION AND ORDER**

**PER CURIAM.** This matter arises from Employer's request for review of the denial by a U.S. Department of Labor Certifying Officer of an application for alien labor certification. Permanent alien labor certification is governed by section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) ("the Act"), and Title 20,

Part 656 of the Code of Federal Regulations.<sup>1</sup> We base our decision on the record upon which the Certifying Officer denied certification and the Employer's request for review, as contained in the appeal file ("AF") and any written arguments. 20 C.F.R. § 656.27(c).

### **STATEMENT OF THE CASE**

On December 19, 2002, Georgia Pacific Corporation ("Employer") applied for alien labor certification on behalf of Abbas Jaffri ("Alien") to fill the position of "Senior Technical Support Analyst". AF at 274-275.

The Regional Certifying Officer ("CO") issued his Notice of Findings ("NOF") on October 18, 2002, proposing to deny certification if Employer was unable to 1) submit documentation of his ability to provide permanent, full-time employment in a current job opening with his facility, and 2) conduct a second recruitment for the position. AF 489-490. Employer's rebuttal, timely filed on November 22, 2002, supplied the requested documentation showing that a current job opening existed and his ability to provide permanent, full-time employment at his facility. AF 331-487. Employer also agreed to re-recruit for the position and submitted a draft of an advertisement to be used in the second recruitment, which was conducted from November 1, 2002 through November 30, 2002. AF at 325, 338-339.

The CO issued a second NOF on April 17, 2003 which proposed denial of the application based on Employer's failure to 1) state with specificity his reasons for rejecting two U.S. applicants and 2) insufficient efforts to timely contact four other qualified applicants. AF at 289-291. Employer timely filed a rebuttal to the second NOF on May 19, 2003. AF at 278-280.

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<sup>1</sup> This application was filed prior to the effective date of the "PERM" regulations. See 69 Fed. Reg. 77326 (Dec. 27, 2005). Accordingly, the regulatory citations in this decision are to the 2004 edition of the Code of Federal Regulations published by the Government Printing Office on behalf of the Office of the Federal Register, National Archives and Record Administration, 20 C.F.R. Part 656 (Revised as of Apr. 1, 2004), unless otherwise noted.

Employer's rebuttal failed to assuage the CO's concerns about the rejection of U.S. applicants and Employer's efforts to recruit U.S. workers, and a Final Determination denying labor certification was issued on June 17, 2003. AF 276-277. On July 11, 2003, Employer requested administrative review of the CO's final determination, which was granted on October 2, 2003. AF at 2, 270. The Board of Alien Labor Certification Appeals ("Board") docketed the case on August 18, 2004.

## **DISCUSSION**

When an employer files an application for labor certification, an implicit "good faith" requirement exists in regard to the recruitment of U.S. workers to fill the position; actions by the employer which indicate a lack of a good faith recruitment effort are thus a basis for denying certification. *M.N. Auto Electric Corp.*, 2000-INA-165 (Aug. 8, 2001) (*en banc*); *H.C. LaMarche Enterprises, Inc.*, 1987-INA-607 (Oct. 27, 1988). In such circumstances, the employer has failed to show that there are not sufficient U.S. workers "able, willing, qualified and available" to perform the work. 20 C.F.R. § 656.1.

### *1. Timeliness of Contact*

Inherent in the requirement of a good faith recruitment effort is an employer's affirmative duty to commence recruitment and make all reasonable attempts to contact applicants "as soon as possible." *Yaran Development Co., Inc.*, 1989-INA-178 (Apr. 19, 1991) (*en banc*). Failure to make timely efforts to contact qualified U.S. applicants after the receipt of resumes from the state job service agency indicates a failure to recruit in good faith. *Loma Linda Foods, Inc.*, 1989-INA-289 (Nov. 26, 1991) (*en banc*). Because there is no specific time limit within which an employer must contact applicants, the reasonableness of the time it takes to do so depends on a number of factors, including whether the position requires extensive or minimal credentials, whether recruitment is local or nonlocal, and whether many or few persons apply for the position. *Id.*

Here, the Employer received a total of six applicant referrals in response to its posting of the job opportunity: one applicant referral on November 12, 2002, four on November 22, 2002, and one on November 26, 2002. AF 299, 310, 316. On more than

one occasion, Employer was instructed to contact the applicants within 14 calendar days. *Id.* Of the six applicants, four resided in Hawaii and two on the mainland. AF 294-295. Employer's recruitment documentation reflects that no telephone contact was attempted with the Hawaii applicants and no attempts were made to contact any of the applicants before January 6, 2003. AF 287-288. In its rebuttal to the second NOF, Employer offered only a blanket assertion that the Hawaii applicants were contacted sometime between December 2 and 24, 2002. AF 283-284. Employer claimed he could not provide telephone bills because "these were all local calls and do not appear on [the] phone bills." AF 284. Employer offers no notes of when the alleged conversations took place nor any documentation of what was discussed with the applicants. *Id.*

Employer's mere assertion that it timely contacted the applicants by phone, without more, is insufficient to meet its burden to adequately document prompt contact with potentially qualified U.S. applicants. *See M.N. Auto Electric Corp.*, 2000-INA-165 (Aug. 8, 2001) (*en banc*) (providing instruction that at a minimum, an employer must keep reasonably detailed notes on the conversation); *Hopewell Co.*, 1989-INA-190 (May 23, 1990) (allegations of telephone contact are insufficient, with no support of who made the calls or what was said in the conversation); *Brilliant Ideas, Inc.*, 2000-INA-46 (May 22, 2000).

The minimal requirements of the position, coupled with the fact that only six individuals applied for the position, and of those six, only two resided on the mainland, led the CO to conclude that six weeks is an unreasonably long time to review the applicant's resumes prior to contacting them. We agree. *See Loma Linda Foods, Inc.*, *supra*; *Creative Cabinet & Store Fixture Co.*, 1989-INA-181 (Jan. 24, 1990); *AKS Jewelry Mfg*, 2000-INA-49 (Dec. 11, 2001).

## *2. Justification or Excuse for Delay*

An application for labor certification must be remanded for new recruitment when an employer demonstrates that its delay was justified and reasonable under the circumstances. *Loma Linda Foods, Inc.*, *supra*, slip op. at 5. Employer cannot

reasonably justify the six weeks of inaction between receipt of the applications and the first recorded contact of the applicants. In his rebuttal to the second NOF, Employer asserted that he was the only person qualified to fully evaluate the applicant's qualifications for the position. AF at 286. Employer's inclusion of his office manager in reviewing the applications belies the assertions that he exercised sole control over the screening process. Moreover, the minimum requirements for the position do not establish the preliminary screening of qualified applicants as a complicated process.

Employer also argued that the delays were justified in part because of his work as a practicing surgeon with a full surgery schedule. AF at 286. An employer has the duty to reduce the impact of his regular duties on the recruitment effort to make a timely effort to contact applicants. *Loma Linda Foods, Inc., supra*, slip op. at 7. There is no evidence that Employer did so here.

Employer also contended that the delay should be excused because the recruitment period fell during the Thanksgiving and Christmas holidays and his offices were closed for portions of that time. AF 283-284. A delay may be excused where a holiday falls within the recruitment period, but only for the duration of that holiday. *Loma Linda Foods, Inc., supra*, slip op. at 9. We have held that the Thanksgiving holiday may reasonably affect two or three days, and the Christmas/New Year season may reasonably affect up to a week. *Id.* The aggregate ten days of the holiday periods, however, does not excuse Employer's unreasonable six-week delay in contacting the applicants.

For the foregoing reasons, we find that the CO properly denied Employer's application for labor certification.

## **ORDER**

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

Entered at the direction of the panel by:

**A**

Todd R. Smyth  
Secretary to the Board of  
Alien Labor Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of Board decisions; or (2) when the proceeding involves a question of exceptional importance. Petitions for review must be filed with:

Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals  
800 K Street, NW  
Suite 400 North  
Washington, D.C. 20001-8002

Copies of the petition must also be accompanied by a written statement setting forth the date and manner of that service. The petition must specify the basis for requesting review by the full Board, with supporting authority, if any, and shall not exceed five double-spaced typed pages. Responses, if any, must be filed within ten days of service of the petition, and shall not exceed five double-spaced typed pages. Upon the granting of a petition the Board may order briefs.